The text is SARA ROSENBAUM, DAVID FRANKFORT, SYLVIA A. LAW AND RAND ROSENBLATT, LAW AND THE AMERICAN HEALTH CARE SYSTEM, 2D ED. (2012), the 2016 Supplement to FURROW, ET AL., HEALTH LAW. Both are available in the NYU Bookstore or on Amazon. A free 2017 Update will be distributed on the first day of class and is available in Vanderbilt Rm. 414.

You should do the reading and come prepared for lively discussion. Pick a seat and stick with it.

Health care is complex. The Affordable Care Act and efforts to repeal and replace it, are daily headline news. In this course we will explore these debates. But the ACA is not our only focus. A vast amount of federal and state law pre-dates the ACA, create the problems it addresses, and remains in force. NYU Law offers an excellent course on the ACA, its implementation, and repeal efforts in the spring semester.

Your grade will be based on a final take home, open book exam. Alternatively, law students can write a paper for substantial writing credit. If you plan to write a paper, you should talk to me about your topic and give me a preliminary statement of a thesis, outline and bibliography by Wednesday, October 25, 2017.

My office is VH, Room 429 and my e-mail is sylivialaw42@gmail.com. I have office hours on Wednesdays from 10-12 and Thursdays from 11-1. Or send me an e-mail and we can make an appointment for another time. When I am in my office and available to talk, I leave the door open.
GENERAL OUTLINE

Part One. INTRODUCTION AND ACCESS TO HEALTH CARE. Weeks 1-3.

Chap. 1. Introduction and Barriers to Access
Chap. 2. Common Law Baselines and State Efforts to Assure Access
Chap. 3. Federal Efforts to Assure Access to Care
Chap. 4. Civil Rights Law and Access to Medical Care
Chap. 5. Public Provision of Medical Care.

Part Two. HEALTH CARE FINANCING. Weeks 3-9.

Chap. 6. Health Care Costs and the Evolution of Health Insurance
   Introduction to the Affordable Care Act.
Chap. 7. Defining Insurer Obligations and Remedies under State Law
Chap. 8. The Employee Retirement Income Security Act
Chap. 9. Private Health Insurance and Coverage Discrimination
Chap. 10. Medicare
Chap. 11. Medicaid

Part Three. QUALITY OF CARE. Weeks 10-12.

Chap. 13. Introduction. Concepts of Quality
Chap. 14. Medical Malpractice and Standards of Care
Chap. 15. Informed Consent to Treatment
Chap. 18. Hospitals as Monitors of Quality
Chap. 19. Licensing Agencies as Monitors of Quality of Care
Chap. 17. Malpractice Crisis
Chap. 20. Payers as Monitors of Quality
Chap. 21. Managed Care and Medical Liability

REGULATION OF HEALTH CARE TRANSACTIONS. Weeks 13-14.

Chap. 24. Fraud and Abuse
Chap. 25. Antitrust
DETAILED ASSIGNMENTS

1. **INTRODUCTION AND ACCESS TO HEALTH CARE.** Weeks 1-2.

   Tuesday, September 5. v-x. 2-10, 17-20, 25-32, mid-35-41.
   - Introduction
   - Barriers to Access
   - Common Law Baselines
     - Hurley v. Eddingfield
     - Campbell v. Mincey

   Thursday, September 7. 41-54, 61-76.
   - State efforts to ensure access.
     - Thompson v. Sun City
   - Federal Efforts to Assure Access: EMTALA
     - Power v. Arlington Hospital
     - Summers v. Baptist Medical Center Arkadelphia
     - Lewellen v. Schneck Medical Center.

   Friday, September 8. 76-107, bottom112-113.
   - What Does It Mean to “Come to” an Emergency Department?
   - The Duty to Stabilize and to Furnish a Medically Appropriate Transfer?
     - In the Matter of Baby K
     - Cherukuri v. Shalala
   - Federal Enforcement of EMTALA Obligations

   - Civil Rights Law and Access to Health Care
     - Race. Language Access
       - Alexander v. Sandoval
     - Gender
       - Whole Women’s Health v. Hellerstedt
         (We will consider contraception and the Affordable Care Act mandate for insurance coverage for contraception later in the semester.)

   Thursday, September 14. 140-155, 159-173.
   - Disability
     - Brandon v. Abbott
   - Non-citizens
   - Public Provision of Medical Care.
Safety Net Hospitals
Community Health Centers.

HEALTH CARE FINANCING. Weeks 3 -9.

   The Evolution of Health Insurance and Health Insurance Law
   The Affordable Care Act
   National Federation of Independent Businesses v. Sebellius

Thursday, September 22 and Tuesday, September 26.
   The Affordable Care Act.
   King v. Burwell
   House v. Burwell
   Implementation, Repeal & Replace

Hobby Lobby v. Burwell

   Defining Insurer Obligations and Remedies under state law
   Wohlers v. Bartgis

   The Employee Retirement Income Security Act: Full and Fair Review
   Mondry v. American Family Mutual Insurance Co.
   CIGNA v. Amara

   Coverage under ERISA Health Benefit Plans: Plan Design and the ERISA Settlor Function
   McGann v. H & H Music Co.
   Judicial Review of Fiduciary Decisions
   Firestone Tire & Rubber v. Bruch
   Cutting v. Jerome Foods, Inc.

   ERISA and Preemption of State Law
   Metropolitan Life Insurance v. Massachusetts

   ERISA and Preemption of State Law continued.
   New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Company
   Retail Industry Leaders Association v. Fielder
   Golden Gate Restaurant v. City and County of San Francisco
   Kentucky Association of Health Plans, Inc. v. Miller
   Standard Insurance Co. v. Morrison
Gobeille v. Liberty Mutual Insurance Company

Thursday, October 12. 410-416, 426-444, 398-402.
ERISA’s Complete Preemption of state law remedies
Pilot Life Insurance Co. v. Dedeaux
Private Health Insurance and Coverage Discrimination
Doe v. Mutual of Omaha

Tuesday, October 17. 450-465, 2017 Update 70-78.
Medicare
Medicaid

Thursday, October 19. 509-513, 523-532, Furrow, 2016 supplement, 70-79. 2017 Update to be provided.
Medicaid: The Legal Basis of Statutory Entitlement
Wilder, Suter, Blessing
Armstrong v. Exceptional Child Care Center

Tuesday, October 24. 552-567, 2017 Update to be provided.
Medicaid: The Legal Basis of Statutory Entitlement continued

Mdicaid’s Interaction with the ADA
Olmstead v. L.C.

Wednesday, October 25. Proposals for substantial papers due.

Tuesday, October 26. 2017 Update 79-125.
Paying for Health Care

QUALITY OF CARE. Weeks 9-12.

Tuesday, October 31. 648-680, 686-690.
Malpractice and Quality of Care
Hall v. Hilburn
Washington v. Washington Hospital Center

Thursday, November 2. .
Class and Malpractice
Informed Consent
Canterbury v. Spence
Conflicts of Interest
Moore v. The Regents of the University of California.
Tuesday, November 7.  784-801, 805-807, 819-823.
  Hospitals and Health Care Quality
  Enterprise liability
  Jackson v. Power
  Darling v. Charleston Community Memorial Hospital
  Tunkl v. Regents of the University of California

  Medical Malpractice and the Politics of Reform
  Staff privileges
  Bryan v. James E. Homes Regional Medical Center
  Licensure, Accreditation and reporting
  Gonzalez-Droz v. Gonzalez-Colon

Tuesday, November 14.  894-916, 919-950, 956-960.
  Payers & Health Care Quality
  Doyle v. Secretary of Health & Human Services
  Insurer Negligence in Connection with Coverage Determinations
  Wickline v. State of California
  McEvoy v. Group Health Cooperative of Eau Claire
  Boyd v. Albert Einstein Medical Center
  Jones v. Chicago HMO Ltd. Of Illinois.

  Managed Care and Medical Liability: ERISA revisited
  Corcoran v. United Healthcare, Inc.
  Aetna Health, Inc. v. Davila

REGULATION OF HEALTH CARE TRANSACTIONS. Weeks 13-14.

Tuesday, November 21. 1108-1126,  Furrow, 2016 Supplement 85-93, 1160-1161, 1163-1171.
  False Claims
  United States v. Krizek
  Universal Health Service, Inc. v. United States ex. Rel. Escobar
  The Anti-Kickback Statute and Stark
  United States v. Greber

Tuesday, November 28.  Contemporary problems in Fraud and Abuse. Materials to be provided.
  Guest expert. Robert Patten, Executive Director, Tax Payers Against Fraud and former
  Massachusetts Assistant Attorney General.

  Traditional Impediments to the application of Antitrust: The Learned profession
  exemption, McCarran-Ferguson, state action.
Horizontal agreements.
  Arizona v. Maricopa Medical Society
  Patrick v. Burget.
  North Carolina State Board of Dental Examiners v. FTC.

  Market Power and Mergers.
  ProMedica v. Federal Trade Commission
  Saint Alphonsus Medical Center-Napa; FTC v. St. Luke’s Hospital System

Thursday, December 7. 1241-1257.
  Vertical Arrangements and Barriers to entry
  Ball Memorial Hospital v. Mutual Hospital Insurance
  Kartell v. Blue Shield of Massachusetts, Inc.